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7 | Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

VINCENT BURLINGAME, an individual;)
RICHARD CARTY, an individual;)
JAMES JACKSON, an individual;)
CHRISTOPHER LaCASCIA, an individual;)
JAMES MARTIN, an individual;)
JONATHAN MOLNAR, an individual;)
BENJAMIN NESS, an individual;)
DeJUAN ROBINSON, an individual; and)
MICHAEL STATKIEWICZ, an individual,)
Plaintiffs,)
vs.)
LAS VEGAS SANDS CORP., a Nevada)
corporation; LAS VEGAS SANDS, LLC,)
a Nevada limited liability company;)
VENETIAN CASINO RESORT, LLC,)
a Nevada limited liability company;)
ZOHAR LAHAV, in his individual and)
representative capacity,)
Defendants.)

CASE NO. 2:11-cv-00960-PMP-RJJ

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION
TO SEAL AND FOR
PROTECTIVE ORDER AND
REQUEST FOR SANCTIONS**

.Plaintiffs VINCENT BURLINGAME, RICHARD CARTY, JAMES JACKSON,
CHRISTOPHER LaCASCIA, JAMES MARTIN, JONATHAN MOLNAR, BENJAMIN NESS,
DEJUAN ROBINSON, and MICHAEL STATKIEWICZ through their attorneys of record.



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1 hereby file the following Opposition to Defendants' Motion to Seal and for Protective Order and
 2 Request for Sanctions:

3 **POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 For Defendants Las Vegas Sands Corp. and Venetian Casino Resort (collectively referred
 6 to herein as "LVSC") and their Chairman, Sheldon Adelson, motions to seal legal proceedings in
 7 which they are a party is as certain as night follows day. Experience has shown that their
 8 motions to seal are driven by the compulsion to inhibit any critical examination of their actions,
 9 just as that same compulsion has inspired numerous unsuccessful defamation suits against
 10 newspapers and journalists who have demonstrated the temerity to publish anything which
 11 offends their hypersensitive nature.

12 For example, in *Jones, et al. v. Las Vegas Sands Corp.*, Eighth Judicial District Court of
 13 Nevada, Case No. A516404, LVSC consumed the Court for months on end with a similarly
 14 meritless motion to seal virtually every aspect of the proceedings while at the same time seeking
 15 to strangle opposing counsel's ability to speak openly with fact witnesses. *See Exhibit "1,"*
 16 Declaration of Donald J. Campbell. LVSC engaged in this practice yet again in *Suen v. Las*
 17 *Vegas Sands Corp.*, Eighth Judicial District Court of Nevada, Case No. A493744, where it
 18 unsuccessfully sought to seal testimony and exhibits at trial. *See Exhibit "2,"* Objection to
 19 Media Request.

20 On the defamation front, one fairly recent example is the abusive suit LVSC filed against
 21 the *Las Vegas Sun* and its former publisher, the revered Barbara Greenspun. LVSC claimed it
 22 had been libeled when the newspaper republished comments made by Nevada Gaming officials
 23 concerning LVSC's "sorry regulatory history." To no one's surprise that case was dismissed;



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1 but not before LVSC sent the chilling message that even accurate reports of its misconduct
 2 would be met with a punitively expensive lawsuit. *See Exhibit “3,” Order of Dismissal.*
 3

4 This Motion is no different. It seeks to impose a public embargo on virtually every aspect
 5 of the case until Plaintiffs comply with a “protective order,” the scope of which is nothing short
 6 of breathtaking and which gives new meaning to the term “burdensome and oppressive.”
 7 Defendants base this ludicrous request on Plaintiffs’ supposed disclosures of confidential
 8 information in this proceeding that have endangered the Adelson family. Defendants also argue
 9 that Plaintiffs will undoubtedly disclose confidential information in the future. In reality, these
 10 concerns are nothing more than a pretext to muzzle Plaintiffs and prevent further public scrutiny
 11 of Defendants’ actions.
 12

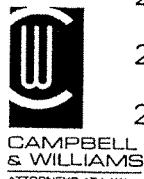
13 II. FACTUAL BACKGROUND

14 Like most discovery disputes, an evaluation of the relative merits of each side’s position
 15 is largely dependent upon an examination of the factual development of the conflict.
 16

17 A. Timeline

18 Accordingly, the Plaintiffs set forth below a timeline of the relevant events in the current
 19 dispute.
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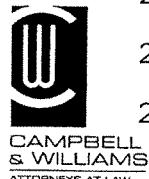
- 21 • **Friday, June 10, 2011.** Plaintiffs, nine Executive Protection Agents (“EPA”) (some
 currently and others formerly employed by the Las Vegas Sands Corporation (“LVSC”)
 who serve on an Executive Protection Team (“EPT”) which provides security for LVSC
 Chairman, Sheldon Adelson, as well as his immediate and extended family), file their
 Complaint (#1) seeking damages under the Fair Labor Standards Act (“FLSA”) for
 unpaid overtime, retaliation and unlawful discharge.
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- 1 • **Thursday, June 16, 2011.** Defense counsel Littler Mendelson, refuses to accept service
2 on behalf of their clients, LVSC and Zohar Lahav, the Vice President of Executive
3 Protection. *See Exhibit “4,” Campbell E-mail of June 17, 2011.*
- 4 • **Tuesday, June 21, 2011.** LVSC is served with the Complaint.
- 5 • **Wednesday, July 13, 2011.** Defendant Zohar Lahav is finally tracked down in a local
6 bar and served with the Complaint. *See Summons Returned Executed (#8).*
- 7 • **Friday, July 22, 2011.** The Fed. R. Civ. P. 26(f) conference is held with counsel for all
8 parties in attendance. All required topics to be addressed by the parties are discussed.
9 Defense counsel Rick D. Roskelley makes no mention of any need for a protective order.
10 *See Exhibit “1,” Declaration of Donald J. Campbell.*
- 11 • **Monday, July 25, 2011.** Lahav’s deposition is noticed for Wednesday, August 10, 2011.
12 Although not required under the Federal Rules of Civil Procedure, Lahav is also
13 personally served with a subpoena to ensure his appearance. *See Subpoena Returned
14 Executed (#10).*
- 15 • **Tuesday, July 26, 2011.** All five EPAs still employed by LVSC are notified that they
16 are being assigned to entry level positions as unarmed uniform security. They are
17 directed to report to a post located outside the Sands Expo and Convention Center to
18 perform the mundane task of checking employee identifications.
- 19 • **Tuesday, July 26, 2011.** Roskelley sends a letter to Plaintiffs informing them that Lahav
20 will attend his scheduled deposition on August 10, 2011. *See Exhibit “5,” Roskelley
21 letter of July 26, 2011.* Roskelley makes no mention of the need for a protective order.
22 *Id.*
- 23 • **Friday, July 29, 2011.** At 3:30 p.m., the EPAs file for a temporary restraining order and
24 preliminary injunction seeking to block their demotion as being violative of the FLSA’s
25
26
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1 anti-retaliation provisions (#11, 12). Less than one hour later, the Honorable Philip M.
 2 Pro sets the hearing on the TRO for Tuesday morning, August 2, 2011, at 8:30 a.m.
 3 (#14).

- 4 • **Tuesday, August 2, 2011.** Following a 45 minute hearing, Judge Pro grants Plaintiffs'
 Motion and enjoins Defendants from demoting the EPAs to uniform security positions
 (#16).
- 5 • **Tuesday, August 2, 2011.** Philip Erwin of Campbell & Williams prepares and forwards
 the proposed FRCP 26(f) Scheduling Order and Discovery Plan to Roskelley for his
 review and comment. *See Exhibit “6,”* Erwin E-Mail of August 2, 2011.
- 6 • **Thursday, August 4, 2011.** Despite Roskelley’s admonition that he is unavailable to
 discuss the case, Erwin nevertheless persuades him to accept a limited five minute
 telephone conference to discuss Lahav’s upcoming deposition on Wednesday, August 10,
 2011. *See Exhibit “7,”* Correspondence of August 4, 2011. During the brief call, lead
 counsel for Plaintiffs Donald J. Campbell explains that he is on vacation and wishes to
 confirm that Lahav will appear as scheduled for his deposition because Campbell must
 book his return flight from Hailey, Idaho to Las Vegas. Roskelley confirms that the
 deposition will go forward and Campbell books his flight home. *See Exhibit “1,”*
 Declaration of Donald J. Campbell. Roskelley makes no mention of any pre-conditions
 to the taking of the deposition and, likewise, does not mention any concerns over
 confidentiality or the need for a protective order. *Id.*
- 7 • **Friday, August 5, 2011.** Erwin e-mails Roskelley alerting him that he has yet to forward
 his comments on the draft FRCP 26(f) Scheduling Order and Discovery Plan and reminds
 him that the deadline for filing is at the end of the day. *See Exhibit “8,”* Correspondence

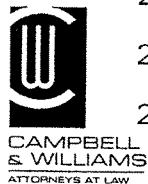


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1 of August 5, 2011. Roskelley responds that he is out of town and declines to address the
 2 matter until the following week. *Id.*

- 3 • **Friday, August 5, 2011.** Campbell receives a late afternoon telephone call from
 4 Roskelley's partner, Patrick Hicks, who informs him that he intends to draft and submit a
 5 proposed protective order to Campbell on Monday, August 8, 2011. *See Exhibit "1,"*
 6 Declaration of Donald J. Campbell. Campbell informs Hicks that he is agreeable to
 7 entering into a stipulation on confidentiality of the upcoming deposition. *Id.* Hicks thanks
 8 Campbell for the courtesy and terminates the call. *Id.*
- 9 • **Monday, August 8, 2011.** Roskelley e-mails Erwin regarding the proposed FRCP 26(f)
 10 Scheduling Order and Discovery Plan and requests the inclusion of language to the effect
 11 that discovery is stayed until the entry of a confidentiality order. *See Exhibit "9,"*
 12 Correspondence of August 8, 2011. Erwin declines to agree to the insertion of
 13 Roskelley's proposed language and specifically cites Lahav's impending deposition as a
 14 reason why such language would be inappropriate. *Id.* Once again, Erwin offers to enter
 15 into a stipulation until the entry of a stipulated confidentiality order. Roskelley does not
 16 respond. *Id.*
- 17 • **Tuesday, August 9, 2011.** At approximately 2:30 p.m., Roskelley calls Erwin and
 18 informs him for the first time that the deposition of Lahav cannot go forward without a
 19 protective order in place. *See Exhibit "10,"* Erwin E-mail of August, 9, 2011. Erwin
 20 refuses to cancel Lahav's deposition, but reiterates Campbell's offer to stipulate to the
 21 confidentiality of those portions of Lahav's deposition which LVSC believes to be
 22 confidential. *Id.*
- 23 • **Tuesday, August 9, 2011.** Late that afternoon, at 4:16 p.m. Peter Navarro of Littler
 24 Mendelson sends a proposed protective order which is remarkable for both its length and
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- 26
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1 overbreadth. *See Exhibit "11,"* Navarro Letter of August 9, 2011. Navarro notifies
 2 Erwin that he wants Erwin's comments by the "close of business" that day. *Id.*
 3

- 4 • **Wednesday, August 10, 2011.** Lahav, accompanied by Roskelley, appears for his
 5 deposition. Roskelley informs Campbell that it is his intention to direct Lahav not to
 6 answer any questions which he believes calls for discussion of "confidential"
 7 information. *See Exhibit "12,"* Deposition of Zohar Lahav, pgs. 6-13. Roskelley does not
 8 dispute that he never mentioned any purported "need" for a protective order at the 26(f)
 9 conference. *Id.* Nor does Roskelley contend that he made any effort to seek a protective
 10 order or hearing before His Honor on this issue as required by FRCP 37. *Id.* Finally,
 11 Roskelley goes so far as to decline Campbell's offer to stipulate to the confidentiality of
 12 the deposition until such time as the Court can consider the matter. *Id.*
 13
- 14 • **Wednesday, August 10, 2011 (A.M.)** In slightly over two hours of testimony during the
 15 morning session of his deposition, Lahav sheds light on a variety of damaging facts and
 16 is repeatedly impeached after he engages in rank mendacity on numerous topics. The
 17 Court is asked to consider the following representative examples:
 18
 - 19 ○ Lahav is "in charge" and "runs the entire department" of Executive Protection for
 20 LVSC. He oversees everything that has to do with the operation including
 21 policies, procedures, planning, training, budget, expenses, financing, hiring and
 firing, and scheduling of shifts for the EPT. *Id.* at 40-43, 54, 119.
 - 22 ○ Lahav has had **no** executive training in the 13-14 years that he has been in charge
 23 of the EPT. *Id.* at pgs. 67-68.
 - 24 ○ Defendants have not paid overtime to any member of the EPT in the history of its
 25 existence. *Id.* at 70-71.
 - 26 ○ Lahav *initially denied* making any administrative changes to the operation of the
 27 EPT after the filing of this lawsuit other than scheduling changes to accommodate
 28 LVSC's retaliatory removal of Plaintiffs from duty. *Id.* at 69-70. Lahav was then
 impeached and *forced to admit* that Defendants *are* now keeping records on
 overtime worked by members of the EPT contrary to his earlier representations.
Id. at 114-119. This comprehensive change in procedure was instituted after this
 lawsuit was filed at the direction of Lahav himself. *Id.* Lahav, in fact, crafted the



1 new timesheets to track overtime worked and issued a directive to track all time
 2 worked over forty (40) hours in a week. *Id.*

- 3 ○ Lahav testified that the Executive Management Team for the EPT has consisted
 4 exclusively of Israelis at all times during his 13-14 year tenure. *Id.* at 28-31. He
 5 further testified that during that same fourteen year period there has never been an
 6 African-American “mid-level supervisor” on the EPT. *Id.* at 76. Lahav’s
 7 explanation of why no African-Americans had ever been supervisors was that
 8 they were all unqualified or because they came on the EPT “late.” *Id.* at 77.
- 9 ○ Lahav admitted that, despite the request of Plaintiffs’ counsel to preserve all
 10 surveillance video related to Plaintiff Statkiewicz’s unlawful termination, all
 11 evidence had been destroyed. *Id.* at 97.
- 12 ○ Lahav admitted that he does not know the legal requirements for the release of
 13 employees with responsibilities to the Armed Forces of the United States even
 14 though EPT members have been and still are required to fulfill reserve duty
 15 service. *Id.* at 104-105.
- 16 ○ In his previous employment with the City of Miami, Lahav admitted he, himself,
 17 demanded overtime pay. *Id.* at 120-121.
- 18 ○ Lahav is unaware of whether members of the EPT are covered by the Nevada
 19 State Industrial Insurance System. *Id.* at 123-124.

- 20 • **Wednesday, August 10, 2011 (P.M.)** Having returned from the lunch recess, Roskelley
 21 abruptly terminates the deposition after only three (3) minutes of testimony. *Id.* at 125-
 22 127. Roskelley, Lahav, and company representative Brian Nagel leave the deposition
 23 despite Campbell’s protests and warning that the Plaintiffs will seek sanctions. *Id.*
 24 Roskelley responds that this “is what litigation is all about.” *Id.*

25 B. Defendants Terminated The Deposition In Bad Faith

26 As detailed in the above timeline, Defendants’ contention that they made a good faith
 27 effort to resolve their issues on the need for a protective order *before* the deposition of Zohar
 28 Lahav is more than just a bit disingenuous. Indeed, Roskelley never even broached the topic of
 having an agreed upon protective order in place as a precondition to the deposition going
 forward until the eve of Lahav’s scheduled appearance.



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1 Similarly, the contention that Plaintiffs were somehow uncooperative is also
 2 demonstrably false. As the record clearly shows, Plaintiffs repeatedly offered to stipulate to
 3 confidentiality in discovery until a protective order could be agreed upon by the parties and/or
 4 resolved by the Court. This offer was flatly rejected both on Tuesday, August 9th as well as on
 5 the morning of the deposition, Wednesday, August 10th. *See Exhibit "12," Deposition of Zohar*
 6 *Lahav, pgs 7-12.*

8 Defendants contend they rejected this offer on the grounds it was merely "sort of a
 9 gentlemen's agreement" which did not provide any assurance that "sensitive security related
 10 information would not end up in the public domain." *Id.* Not true. Plaintiffs' counsel offered
 11 not a "gentlemen's agreement," but, instead, offered a *binding stipulation* of confidentiality
 12 subject to enforcement by the imposition of sanctions. *Id.* Thus, it was Defendants' counsel, not
 13 the undersigned, that rejected every meaningful and reasonable effort to resolve the "dispute."

15 Equally erroneous is the suggestion that the unilateral termination of the deposition was
 16 permissible because "it appeared that Plaintiffs' counsel had run out of questions to ask Mr.
 17 Lahav."¹ *See Motion, p. 15:20-22.* Zohar Lahav is the most critical witness in the case. At the
 18 time his deposition was terminated he had given only two hours and eighteen minutes of actual
 19 testimony. The undersigned counsel represents nine separate Plaintiffs. Each Plaintiff has issues
 20 idiosyncratic to his individual claims which must be explored in discovery. Under such
 21 circumstances, no attorney could ever be said to have comported with a standard of reasonable
 22

24
 25 ¹ In fact, Mr. Roskelley acknowledged he was preventing Mr. Campbell from inquiring
 26 into "operational issues which are a very critical and important component of this case." *See*
 27 *Exhibit "12," Deposition of Zohar Lahav, pgs. 89-91.* For Defendants to now assert that
 28 Plaintiffs' counsel had "run out of questions" when they were intentionally barring inquiry into
 crucial aspects of the case, indelibly soils their claims that all of their actions were clothed in
 "good faith."



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1 litigation practice by conducting the deposition of the most important witness in the case in less
 2 than two and a half hours.
 3

4 Clearly then, these facially meritless arguments only serve to underscore the indisputable
 5 fact that the Defendants were determined that Zohar Lahav would not be deposed. Defendants'
 6 eleventh hour machinations about the need for a protective order were simply a ruse to achieve
 7 that goal. That having been said, Plaintiffs will now turn to the all-inclusive protective order
 8 sought by Defendants.

9 **III. ARGUMENT**

10 **A. Legal Standard**

11 “The common law right of public access to judicial documents is said to predate the
 12 Constitution.” *United States v. Amadeo*, 44 F.3d. 141, 145 (2d. Cir. 1995). The United States
 13 Supreme Court has recognized the public’s right to inspect and copy court documents and
 14 otherwise have access to judicial proceedings. *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,
 15 597 (1978); *see also Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.
 16 2006) (“[h]istorically, courts have recognized a general right to inspect and copy public records
 17 and documents, including judicial records and documents”). “This right is justified by the interest
 18 of citizens in keeping a watchful eye on the workings of public agencies.” *Kamakana*, 447 F.3d
 19 at 1178.

20 Logically, the courts have extended this right to attendance at court proceedings. *See*
 21 *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980); *see also Republic of the Phillipines*
 22 *v. Westinghouse Elec. Corp.*, 949 F.2d 653, 659 (3d Cir. 1991) (holding that the First Amendment
 23 and the common law protect the public’s right of access to civil proceedings); *Grove Fresh*
 24 *Distrib., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (finding that importance of



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1 public scrutiny of public proceedings is just as important as that of criminal proceedings, and the
 2 right of access to those proceedings is well-established).

3 With these important policy interests in mind, the Ninth Circuit has held that “a strong
 4 presumption of public access is the starting point” when addressing a request to seal a judicial
 5 record. *Kamakana*, 447 F.3d at 1178. Indeed, “[a] party seeking to seal a judicial record [] bears
 6 the burden of overcoming this strong presumption by meeting the ‘compelling reasons’ standard.”
 7 *Id.* (citing *Foltz v. State Farm Mut. Auto Insur. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). “That
 8 is, the party must articulate compelling reasons supported by specific factual findings that
 9 outweigh the general history of access and the public policies favoring disclosure, such as the
 10 public interest in understanding the judicial process.” *Kamakana*, 447 F.3d at 1178-79 (internal
 11 citations omitted). “The mere fact that the production of records may lead to a litigant’s
 12 embarrassment, incrimination, or exposure to further litigation will not, without more, compel the
 13 court to seal its records.” *Id.* at 1179.²

14 The substantial burden that Defendants must overcome in order to prevail on their Motion
 15 is made infinitely more difficult by the expansive nature of the proposed Protective Order. *See*
 16 Exhibit “11” Proposed Stipulated Protective Order. Initially, Defendants argue that Plaintiffs—
 17 and only Plaintiffs—must file *everything* under seal. *Id.* at § VII. Then, Defendants will be able
 18 to unilaterally designate any and all information they believe would be dangerous to the Adelson
 19 family which, as will be detailed below, includes even the most harmless and readily available
 20 facts. *Id.* Simply put, Defendants seek *carte blanche* to censure Plaintiffs and preclude the public
 21 from gaining any insight into this public proceeding.

2 Defendants muddle the “compelling reasons” and “good cause” standards that are
 3 described by the Ninth Circuit in *Kamakana*. To be clear, the “good cause” exception to the
 4 presumption of access to public records only applies to a “sealed discovery document attached to
 5 a non-dispositive motion.” *Kamakana*, 447 F.3d at 1179. Obviously, this limited exception is
 6 inapplicable here as Defendants seek much more than the sealing of isolated documents
 7 produced during discovery.

At the outset, it is well established that it is improper for a district court to grant a party *carte blanche* to decide which information is confidential and should be sealed from the public eye. See, e.g., *Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944 (7th Cir. 1999) (raising the inherently flawed nature of the parties' confidentiality order *sua sponte* where it allowed parties to unilaterally "designate information as confidential, and thus keep out of the public record of the litigation, any document" believed to contain confidential or trade secret information); *Cook Inc. v. Boston Scientific Corp.*, 206 F.R.D. 244, 247 (S.D. Ind. 2001) ("[a] court may not issue a 'blanket' or 'umbrella' protective order that gives the parties *carte blanche* to decide which information to protect..."); *Bayer AG and Miles, Inc., v. Barr Lab., Inc.*, 162 F.R.D. 456, 465 (S.D.N.Y. 1995) ("'umbrella' protective orders are disfavored...").

In *Citizens First*, the well-respected legal scholar Judge Richard A. Posner addressed the entry of a protective order similar to that requested by Defendants as follows:

There is a deeper issue of confidentiality in this case than the currency of the protective order, and we must address it in order to make clear the judge's duty on remand. That issue is the judge's failure to make a determination, as the law requires, of good cause to seal any part of the record of a case. *Instead of doing that he granted a virtual carte blanche to either party to seal whatever portions of the record the party wanted to seal. This delegation was improper. The parties to a lawsuit are not the only people who have a legitimate interest in the record compiled in a legal proceeding.*

* * * *

The determination of good cause cannot be elided by allowing the parties to seal whatever they want, for then the interest in publicity will go unprotected unless the media are interested in the case and move to unseal. The judge is the primary representative of the public interest in the judicial process and is duty-bound therefore to review any request to seal the record (or part of it). He may not rubber stamp a stipulation to seal the record.

Citizens First, 178 F.3d at 944 (emphasis added); see also *Proctor & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 227 (6th Cir. 1996) ("The District Court cannot abdicate its responsibility to oversee the discovery process and to determine whether filings should be made



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1 available to the public. It certainly should not turn this function over to the parties, as it did here
 2 ... The protective order in this case allows the parties to control public access to court papers,
 3 and it should be vacated or substantially changed").³
 4

5 As it is now clear that Defendants' request to seal and for protective order violates the
 6 letter and spirit of the law, Plaintiffs will now address the false claim that Plaintiffs have
 7 disclosed confidential information.

8 **B. The Fallacy of Defendants' Claims of Confidentiality**

9 Relying upon an affidavit submitted by Brian Nagel (who is not and never has been in
 10 charge of the Executive Protection Team), the Defendants proffer a list of bullet points which
 11 they contend contains "information which, if disclosed, could pose a real and direct safety risk to
 12 members of the Protected Family." *See Motion*, pgs. 4:9-10; 21:13-22:1. The Plaintiffs will now
 13 discuss each of these categories in turn.
 14

15 In order of prominence, Defendants claim the most important information to be protected
 16 relates to the "ages and genders of minor children." *Id.* at 4:12. Defendants have expanded on
 17 this theme throughout their Motion by repeatedly claiming that the "disclosure" in the Plaintiffs'
 18 Motion for Temporary Restraining Order that the Plaintiffs were tasked, not to protect Mr.
 19 Adelson, but rather Mrs. Adelson and "the Adelson boys, age twelve and fourteen" constituted a
 20 "reckless submission to the Court." *Id.* at 6:9-10; 8:1-3; 8:10-11 9:12-28; 19:24-20:1; 21:13. The
 21 rationale offered for this claim is that by disclosing the ages and genders of the adolescent sons,
 22 an "adversary" will now be able to access this information in an effort to "identify the children,
 23 locate their school(s) or develop patterns of activities or personal habits." *Id.* at 6:12-13.
 24

26
 27 ³ Defendants' proposed Protective Order here is far more restrictive than even that which
 28 was agreed upon and entered in *Jones, et al. v. LVSC, supra*. See Exhibit "13," Stipulated
 Protective Order.

1 Really? Obviously Mr. Nagel did not perform a simple Google search before he prepared
 2 his Affidavit in support of this Motion to Seal. Had he done so, he would have discovered
 3 literally reams of personal material on the Adelson sons; including news articles, photographs, as
 4 well as details of their school and social activities. *See Exhibit "14," Collected Materials on*
 5 *Adelson sons.* So clearly, Mr. Nagel's condemnation of the "disclosure" that the Adelson
 6 children are adolescent males as being "reckless" was a dramatic overstatement to say the least.
 7 Indeed, it appears that the characterization "reckless" would seem far more aptly applied to Mr.
 8 Nagel's failure to acknowledge the extraordinary amount of information which is publicly
 9 available to any eight year old who has access to a computer and knows how to use any one of
 10 hundreds of internet search engines.
 11

12 The same could be said of Mr. Nagel's criticism regarding the identities of "family
 13 members" who are protected. This information, too, has long been publicly available. Indeed,
 14 LVSC publicly disclosed that Adelson is granted an executive compensation perk of \$2.5 million
 15 in security for himself and his immediate family. *See Exhibit "15," April 29, 2011 Proxy*
 16 *Statement; Exhibit "16," Las Vegas Review-Journal Article of April 30, 2011.* It is hardly a
 17 state secret that Adelson and his immediate family have a full security team providing them with
 18 around-the-clock protection. As to Adelson family as a whole, there is likewise abundant
 19 personal information regarding them which is readily available online. *See Exhibit "17,"*
 20 *Collected Materials on Adelson family.* Notably, much of this information comes from the
 21 Adelsons themselves.
 22

23 Further, Defendants raise the specter of the disclosure of the locations and addresses of
 24 the Adelson family homes. *See Motion, p. 10; 4:25-28; 21:25-22:28.* To be clear, Plaintiffs have
 25 not disclosed these details in any court filings. But even if they had, this information is also
 26 readily available in the public domain. Publications of no less stature than the New York Times
 27
 28



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1 and the New Yorker have disclosed that Adelson owns homes in Las Vegas, Malibu, Boston,
 2 and Tel Aviv. *See Exhibit "18,"* Collected Materials on Adelson property. The exact addresses
 3 and property details are available on through any one of a multitude of internet search engines.
 4
Id.
 5

6 Another fiction is the allegation that Plaintiffs will disclose travel dates and destinations
 7 which could endanger the family. *See Motion*, p. 10:17-24. They even go so far as to claim that
 8 LVSC is working with the FAA to seal this information. As the Court can surely see, there is a
 9 wealth of information regarding the manner in which the Adelson family travels.
 10

11 For example, the website Flickr.com contains numerous photographs of the aircraft
 12 owned by Adelson and leased to LVSC. *See Exhibit "19,"* Aircraft Photographs. To be sure,
 13 there are a litany of pictures of the aircraft with details including make, model, and tail numbers;
 14 the date and location that the pictures were taken; and in some circumstances, the names of the
 15 passengers. *Id.* In fact, the Adelson fleet of aircraft and where they are stored was detailed at
 16 length in an article in the Las Vegas Review-Journal less than two weeks ago. *See Exhibit "20,"*
 17 LVRJ Article of August 18, 2011.
 18

19 Similarly, Mr. Nagel's theatrical handwringing because it was disclosed that Mr. Adelson
 20 is guarded by Israelis who are armed with semi-automatic weapons is, in a word, silly. In their
 21 critically acclaimed book, *The Money and The Power: The Making of Las Vegas and Its Hold on*
 22 *America, 1947-2000*, New York Times and Washington Post reporters, Sally Denton and Roger
 23 Morris, exposed not only these very same facts, but also that Mr. Adelson actually reveled in
 24 public displays of his personal security detail:
 25

26 Adelson, the billionaire promoter and a right-wing Zionist with business and
 27 political ties to Israel, had the same mentality of the Strip's former overseers. He
 28 had gotten his start distributing vending machines in the 50's on the streets of
 Brockton, Massachusetts, where the Patriarca branch of the Syndicate rarely
 allowed competitors in the field, and his reactionary anti-unionism echoed the
 animus of the old mob toward independent organized labor. A crass new mogul

1 who behaved with the arrogance and impudence of an old boss, he went about the
 2 city in the 90's, even into the editorial offices of the Review Journal, with ex-
 3 Mossad body guards brazenly carrying semi-automatic weapons.

4 Sally Denton and Roger Morris, *The Money and The Power*, Pg. 363 (Alfred A. Kanoff, 2001)

5 Indeed, the undersigned counsel was, himself, subject to a similar act of intimidation
 6 while taking Mr. Adelson's deposition in *Jones v. LVS, supra*. See Exhibit "21," DVD of
 7 Adelson Deposition. The incident was ultimately resolved, when, after Mr. Adelson unilaterally
 8 terminated his deposition, his counsel, Rusty Hardin, Esq. apologized for his client's behavior.

9 *Id.*

10 As for the remaining topics identified by Nagel, those being: the "number of security
 11 members;" "times of day when security teams change shift;" "job responsibilities;" "security
 12 policies and procedures;" and "descriptions of security training," *none* of these topics have been
 13 disclosed by the Plaintiffs. With respect to the assertion that specific assignments were
 14 disclosed, His Honor will recall that the representation that Plaintiffs did not guard Mr. Adelson
 15 was offered in rebuttal to LVSC's argument that the agents had to be "reassigned" because they
 16 otherwise would overhear Mr. Adelson talking about this litigation.

17 Defendants also base their request for a protective order on the so-called
 18 "confidentiality" of documents that "Plaintiffs are likely to file in Court" in the future. See
 19 Motion, p. 10:6-11:22. This claim is questionable at best. Plaintiffs have *not* filed any of these
 20 documents with the Court. As such, Defendants' claims are purely speculative and based on
 21 nebulous future harm that may never occur. This certainly does not constitute a "compelling
 22 reason" supported by "specific factual findings" necessary to overcome the public's
 23 constitutional right of access.

24 There is, however, a curious contrast which will be drawn between the conduct of the
 25 Plaintiffs and that of the Defendant, Zohar Lahav, Vice President of Executive Protection for the
 26



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1 Las Vegas Sands. Upon resuming Mr. Lahav's deposition, Plaintiffs intend to explore a
 2 "security breach" which occurred in relation to the "sensitive" issues identified by Mr. Nagel as
 3 "geographic locations where security services are/were performed" and "personal habits and
 4 travel patterns of the Protected Family." *Id.* at 4:22; 27. Mr. Lahav is believed to have no
 5 hesitancy in disclosing when, where, and for whom he provides protection services. Indeed, Mr.
 6 Lahav is believed to have disclosed all of this "highly sensitive" information to complete
 7 strangers over the internet through the use of internet dating services.

8
 9 In light of the foregoing, perhaps Mr. Nagel's time might be more productively spent in
 10 counseling Mr. Lahav on the issue of disclosing "highly sensitive matters" over the internet to
 11 strangers as opposed to fretting about the inconsequential comments that have been made by the
 12 Plaintiffs in a United States Courthouse.

13
 14 **C. Defendants' Personal Attack upon Plaintiffs and Their Counsel is Designed
 15 to Divert the Court's Attention from their Inexcusable Conduct in
 16 Terminating the Deposition**

17 Defendants would have this Court believe that they filed this Motion as a last resort and
 18 only when confronted with a wholly unreasonable adversary. They argue, in short, that the
 19 actions of the Plaintiffs and their counsel have been so outrageous that the termination of Zohar
 20 Lahav's deposition was fully supported by the Federal Rules of Civil Procedure. Nothing could
 21 be further from the truth. We respectfully ask His Honor to consider the following legal authority
 22 and verifiable facts as opposed to the hyperbolic claims of calamity and racism which have been
 23 advanced by the Defendants.

24
 25 **1. Abundant Legal Authority Strictly Forbids the Type of Conduct
 26 Engaged in by Lahav and his Counsel**

27 Simply put, defense counsel's scheme to limit the fair examination of Mr. Lahav by
 28 instructing him not to answer certain questions and eventually terminating the deposition clearly
 contravenes the Federal Rules of Civil Procedure. It is well established that counsel is prohibited.

1 from directing a deponent not to respond to questions posed to him during a properly noticed
 2 deposition except in very limited circumstances. *See, e.g., Ralston Purina Co. v. McFarland*, 550
 3 F.2d 967, 973 (4th Cir. 1977) (“[t]he action of [] counsel in directing [the deponent] not to
 4 answer the questions posed to him was indefensible and utterly at variance with the discovery
 5 provisions of the Federal Rules of Civil Procedure”); *Eggleson v. Chicago Journeymen
 6 Plumbers' Local Union No. 130*, 657 F.2d 890, 902 (7th Cir. 1981) (the general rule “is that
 7 absent a claim of privilege, it is improper for counsel at a deposition to instruct a client not to
 8 answer”). Rather, “[i]f counsel objects to a question, he should state his objection for the record
 9 and then allow the question to be answered.” *Eggleson*, 657 F.2d at 902.

10 Indeed, FRCP 30(c)(2) provides the “exclusive grounds for instructing a deponent not to
 11 answer.” *Shapiro v. Paul Revere Life Ins. Co.*, 1997 WL 601430, *1 (N.D. Cal September 18,
 12 1997); *see also Detoy v. City and County of San Francisco*, 196 F.R.D. 362, 367 (N.D. Cal. 2000)
 13 (counsel “shall refrain from instructing a witness not to answer, except as provided in Rule
 14 30(c)(2)”). In pertinent part, FRCP 30(c)(2) provides that “[a] person may instruct a deponent not
 15 to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the
 16 court, or to present a motion under Rule 30(d)(3).”
 17

18 Rule 30(d)(3), in turn, provides that “[a]t any time during a deposition, the deponent or a
 19 party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a
 20 manner that unreasonably annoys, embarrasses, or oppresses the deponent or party.” FRCP
 21 30(d)(3)(A) “[I]t should be clearly understood it is not the embarrassment or annoyance which
 22 may caused by unfavorable answers that is the criteria of 30(d)(3).” *In re Statosphere Corp. Sec.
 23 Litig.*, 182 F.R.D. 614, 619 (D. Nev. 1998). To the contrary, “[i]t is the ‘manner’ in which the
 24 interrogation is conducted that is grounds for refusing to proceed...” *Id.*
 25



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Further, “[w]hile the issuance of an order terminating deposition is a matter within the sound discretion of the court, the power to halt or limit deposition is sparingly used.” *Smith v. Logansport Cnty. Sch. Corp.*, 139 F.R.D 637, 640 (N.D. Ind. 1991). A party that is found to have impeded, delayed, or otherwise frustrated the fair examination of a deponent may also be subject to sanctions. Fed. R. Civ. P. 30(d)(2); *see also Rockwell Int'l, Inc. v. Pos-A-Traction Indus., Inc.*, 712 F.2d 1324, 1326 (9th Cir. 1983) (affirming award of expenses where “advice [not to answer] was not substantially justified). Likewise, “an objecting party who demands the termination of a deposition may subject himself to costs and reasonable expenses, which may be considerable where the taking of the deposition has ceased upon demand, if the court finds that his motion for a protective order has no substantial basis.” *Id.* at 640-41.

2. Defendants’ Improper Termination of Lahav’s Deposition was Clearly Designed to Avoid the Elicitation of Further Damaging Testimony and was a Rank Violation of the Rules Governing Conduct During Depositions

Prior to the deposition commencing, Mr. Roskelley plainly stated on the record that he would instruct Lahav not to answer questions related to “confidential information regarding the executive protection team or the principals.” *See Exhibit “12,” Deposition of Zohar Lahav, p. 6.* Mr. Roskelley further informed Plaintiffs that “to the point we get into information that we deem to be of a confidential nature, we may have to exercise [] our rights under Rule 30(d) to terminate the deposition...” *Id.* at 12. As such, Mr. Roskelley was clearly laying the groundwork for his improper termination of Lahav’s deposition.

Based on these representations, Mr. Roskelley improperly instructed Lahav not to answer questions relating to the assignments of EPAs on the grounds of confidentiality even though Defendants had failed to seek a protective order with the Court. *Id.* at p. 89-91. This instruction was patently improper as Mr. Roskelley was only permitted to instruct Lahav not to answer a question “when necessary to preserve a privilege, to enforce a limitation ordered by the court, or

1 to present a motion under Rule 30(d)(3)." FRCP 30(c)(2). Obviously, Mr. Roskelley's
 2 instruction not to answer based on confidentiality violated the plain language of the Federal
 3 Rules of Civil Procedure.
 4

5 Then, less than three minutes after the restart after lunch, Mr. Roskelley abruptly
 6 terminated the deposition under the auspices of FRCP 30(d) in response to a question concerning
 7 an EPA that was injured while skiing with the Adelson children. *Id.* at 125-126. Notably, Mr.
 8 Roskelley *never* objected to the manner in which the deposition was being conducted or stated
 9 that it was being done to annoy, embarrass, or oppress Lahav. Rather, Mr. Roskelley brazenly
 10 terminated the deposition based solely on the subject matter that was being inquired into by
 11 Plaintiffs' counsel. This is a clear violation of the Federal Rules of Civil Procedure. *See Fed. R.*
 12 *Civ. P. 30(d); In re Statosphere Corp. Sec. Litig.*, 182 F.R.D. at 619.
 13

14 It is undisputed that the only basis for the termination of Lahav's deposition was that
 15 Plaintiffs' counsel inquired into so-called confidential subject matter. With that in mind,
 16 Defendants retroactively scrambled to craft an argument that the deposition was terminated
 17 pursuant to the narrow confines of FRCP 30(d), *i.e.*, that it was being conducted in bad faith or
 18 to annoy, harass, or oppress the deponent. To that end, Defendants proffer the following
 19 synopsis of their personal attack against Plaintiffs' counsel:
 20

21 The questions asked by Plaintiffs' counsel during Mr. Lahav's deposition speak
 22 volumes about the Plaintiffs' true motives in this case. During the deposition,
 23 Plaintiffs' counsel spent time asking the deponent insulting questions about race,
 24 his religion and the Protected Family, when he could have been asking questions
 25 that were actually relevant to Plaintiffs' FLSA claims. These questions were
 26 designed only to harass and embarrass Mr. Lahav.
 27

28 *See Motion*, pgs. 14:27-15:3.

29 This is utter nonsense which is wholly unsupported in the record. Courts have found this
 30 type of "*after-the fact attempt to reconcile the unilateral termination of the [] depositions with*
the requirements of Rule 30(d) was disingenuous, at best." *Hearst/ABC-Viacom Entm't Serv.*

1 v. *Goodway*, 145 F.R.D. 59, 62 (E.D. Pa. 1992) (emphasis added). As the *Hearst* court noted,
 2 “*[t]he various justifications put-forth in [the] memorandum bear little resemblance to the*
 3 *reasons given by defense counsel when he ended the deposition.*” *Id.* (emphasis added).

4
 5 What really occurred is as follows. When faced with a rapidly approaching date for the
 6 deposition of Zohar Lahav, counsel for the Defendants unquestionably engaged in the usual
 7 extensive preparation of the witness. During that preparation they learned what Plaintiffs have
 8 long known . . . that Zohar Lahav has little, if any, regard for U.S. law.⁴ Despite being employed
 9 by a publicly traded corporation listed on the New York Stock Exchange, Lahav acted, quite
 10 literally, as a law unto himself. Obviously, Defendants needed to concoct a ruse to conceal
 11 Lahav’s incompetence and settled upon obscene accusations of racism and anti-Semitism.⁵

12
 13 In addressing Defendants’ baseless accusations, Plaintiffs ask the Court to consider the
 14 following. The FLSA provides that the statute of limitations can be extended from two to three
 15 years if the illegal conduct by the employer is “willful.” 29 U.S.C. § 255(a). A breach, in turn,
 16 is “willful” if the “employer either knew or showed reckless disregard for the matter of whether
 17 its conduct was prohibited by the [FLSA].” *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128,
 18 132 (1988). Accordingly, Plaintiffs intend to demonstrate that Defendants, and Lahav in
 19 particular, created an atmosphere within the EPT of total disregard and contempt for federal law.
 20 Jurists have routinely found that violations of other federal employment laws are relevant to

21
 22 ⁴ As the Court will recall, Mr. Lahav’s contempt for the laws of this country was
 23 specifically referenced at Paragraph 24 of the Complaint.

24
 25 ⁵ The leveling of baseless charges of anti-Semitism is nothing new for LVSC and its
 26 Chairman. In *Adelson v. Smith*, United States Bankruptcy Court for the District of Nevada, Case
 27 No. 2:08-BK-01012, columnist and author, John L. Smith and the Las Vegas Review Journal
 28 were similarly labeled as anti-Semitic. That claim was completely undermined when it was
 revealed that Smith’s own mother was a Jew. Adelson was ultimately forced to dismiss his
 defamation action against Smith and required to pay his costs. See Exhibit “22,” Order of
 Dismissal.



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1 establishing a “willful” breach. *See, e.g., Kolsiad v. Am. Dental Ass’n*, 527 U.S. 526, 551 (1999)
 2 (Stevens, J., dissenting with whom Souter, J., Ginsburg, J., and Breyer, J. join) (“*There are*
 3 *other means of proving that an employer willfully violated the law. An employer, may, for*
 4 *example, express hostility toward employment discrimination laws...”*)⁶; *Herman v. RSR Sec.*
 5 *Serv. Ltd.*, 172 F.3d 132 (2d Cir. 1999) (citing other illegal business activities of the employer
 6 and its failure to comply with income tax laws when finding “reckless disregard” for the FLSA);
 7 *Ramirez v. Rifkin*, 568 F.Supp.2d 262 (E.D.N.Y. 2008) (violations of federal employment tax
 8 laws constituted evidence of “reckless disregard” for whether employer’s conduct was subject to
 9 the FLSA). As such, Defendants’ representations that Plaintiffs’ counsel was fishing for
 10 irrelevant information or somehow harassing Lahav are merely after the fact pretexts.⁷
 11 Remember, Mr. Rosekelley *never* offered any objection to those questions or even hinted that
 12 they were in any way improper when they were asked.

13 In light of the foregoing authority, Plaintiffs’ counsel quite rightly sought to elicit
 14 testimony regarding Lahav’s complete lack of respect for federal law. As forecasted by
 15 Plaintiffs, Lahav’s complete indifference to the laws governing employers was striking. *See*
 16 Exhibit “23,” Declaration of Plaintiffs. For example, Lahav was totally unaware of the mandate

17 ⁶ The United States District Court of Nevada has relied on this exact language from Justice
 18 Stevens’ dissent in *Kolstad* when addressing “willful” or “intentional” violations of law in the
 19 employment context. *See E.E.O.C. v. Scolari Warehouse Mkt., Inc.*, 488 F.Supp.2d 1117 (D.
 20 Nev. 2007).

21 ⁷ Even if Plaintiffs’ counsel was inquiring into irrelevant subject matter—which is not the
 22 case—an instruction not to answer and subsequent termination of the deposition would still have
 23 violated the Federal Rules of Civil Procedure. “The irrelevancy of a question is not grounds to
 24 instruct a witness not to answer the question . . . Likewise, the mere fact that more than one
 25 irrelevant question is asked, or even a series of irrelevant questions is asked does not, by itself,
 26 constitute annoyance or oppression contemplated by 30(d)(3). *In re Statosphere Corp. Sec.*
 27 *Litig.*, 182 F.R.D. 614, 619 (D. Nev. 1998); *see also Hearst/ABC-Viacom* 145 F.R.D. 59 at 63
 28 (“the fact that a question is repetitive or irrelevant is not an appropriate ground for instructing a
 witness not to answer a question, since it does not involve a matter of privilege”).



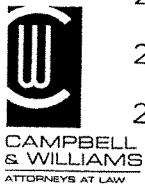
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1 that an employer must provide a leave of absence for an employee to serve in the Armed Forces
 2 of the United States. *See Exhibit "12," Deposition of Zohar Lahav, pgs. 104-105.* His ignorance
 3 was evidenced by the fact that Plaintiff Jackson was routinely forced to utilize vacation time in
 4 order to fulfill his obligations to the United States Navy Reserves. *Id.* Further, Lahav was
 5 equally indifferent to the application of State Employment Laws including Nevada State
 6 Industrial Insurance. *Id.* at 123-24.

8 Most important in this regard was Plaintiffs' exploration of the very serious issue of
 9 employment discrimination by Lahav within the EPT. Lahav's testimony established that Las
 10 Vegas Sands Corporation has permitted him to head an Executive Management Team which, for
 11 fourteen years, has consisted only of Israelis. *Id.* at 28-31. Moreover, during those same fourteen
 12 years that Lahav and his fellow Israelis managed the Las Vegas Sands Executive Protection
 13 Team, not a single African American was ever promoted to any mid-level supervisory position
 14 (of which there are many) let alone placed on the Executive Management Team. *Id.* And
 15 contrary to Lahav's representation in his deposition, there were *many* African-American
 16 candidates who were extraordinarily qualified for promotion.
 17

18 Given this *prima facie* demonstration of employment discrimination on the basis of
 19 religion and race, is it any wonder that Las Vegas Sands Corporation and Mr. Nagel are
 20 apoplectic that the extraordinary qualifications of the Plaintiffs DeJuan Robinson and James
 21 Jackson will become publicly known?⁸ It is clear then, the claim that the disclosure of their
 22 professional achievements would in some manner "compromise" the safety of the Adelson
 23

25 ⁸ Mr. Nagel is well aware of the implications of failure to promote on the basis of race and
 26 religion due to his intimate involvement in a massive class action lawsuit filed by African-
 27 American secret service agents against the United States Secret Service. *Moore et al. v. Napolitano*, United States District Court for the District of Columbia, Case No. 1:00-cv-00953. Indeed, Mr. Nagel was actually deposed in relation to the allegations of widespread racial discrimination by the United States Secret Service.



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1 family is farcical. *See Motion*, p. 11:14. In truth, achievements of these men eviscerate Zohar
 2 Lahav's disgraceful allegation that they were "not qualified" for even mid-level supervisory
 3 positions.⁹ So, quite to the contrary of Defendants' contention that Plaintiffs are "playing the
 4 race card," it is clear that Plaintiffs are doing nothing more than playing the cards they have been
 5 dealt.

6
 7 In sum, the contention that Lahav would discriminate against these men on the basis of
 8 their religion and race in violation of Title VII of the Civil Rights Act of 1964 and yet not
 9 "willfully" violate their rights under the Fair Labor Standards Act is simply unworthy of belief.

10 **IV. CONCLUSION**

11 Based on the foregoing, Plaintiffs respectfully request that this Court deny Defendants'
 12 Motion to Seal and for Protective Order and Award Sanctions to Plaintiffs based on Defendants'
 13 Improper Conduct and Termination of the Deposition of Zohar Lahav.

14
 15 DATED this 29th day of August, 2011.

16 CAMPBELL & WILLIAMS

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22
 23
 24
 25 As the Court will recall, DeJuan Robinson is a former United States Marshall who was
 26 one of a handful of national instructors in close quarter combat and was one of the supervisors of
 27 the Judicial Protection Detail in the criminal prosecution *United States v. Omar Ahmad Ali Abdel*
Rahman et al., United States District Court for the Southern District of New York Case No.
 28 1:93-cr-00181. EPT Member James Jackson was twice named by the United States Navy as
 Sailor of the Year and, during a distinguished military career of eighteen years, supervised
 thousands of U.S. Navy personnel.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing was served on the 29th day of August, 2011 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Philip R. Erwin, Esq.
An Employee of Campbell & Williams



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